CANADIAN RECIPROCITY TREATY.

REMARKS

OF

HON. GEORGE F. EDMUNDS,

OF VERMONT,

IN THE

SENATE OF THE UNITED STATES,

JANUARY 22, 1875.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1875.

REMARKS

OF

HON GEORGE A. EDMUNDS,

Mr. EDMUNDS said:

Mr. PRESIDENT: I present joint resolutions of the Legislature of the State of Vermont, relating to reciprocity in trade with the Dominion of Canada; which I ask may be read.

The Chief Clerk read as follows:

Joint resolution relating to reciprocity in trade with the Dominion of Canada.

regard for the best interests of Vermont, as well as the whole country, it is the duty of our Senators and Representatives in Congress to use their influence against the consummation of any treaty relating to reciprocity in trade with the Dominion of Canada, and to insist that the subject of trade and commercial intercouse with Canada, as well as with all other foreign countries, is not a proper matter of treaty stipulation, but belongs to Congress, and should be wisely regulated by judicious legislation.

Resolved, That in common with the Canadian people we earnestly desire and hope for the early completion of the ship-canal connecting the waters of the Saint Lawrence and Hudson Rivers with Lake Champlain, as forming an important line of communication between the great cities on the Atlantic sea-board and the grain and lumber regions of Canada and the Northwest, and in this work we invite the co-operation respectively of the governments of the Dominion of Canada and the United States.

Resolved, That the governor of this State be, and is hereby, requested to transmit a copy of these joint resolutions to each of our Senators and Representatives in Congress; also a copy each to the President of the United States and the governor-general of the Dominion of Canada.

LYMAN G. HINCKLEY,
H. HENRY POWERS,

I, George Nichols, secretary of state of the State of Vermont, hereby certify that the foregoing is a true copy of joint resolutions adopted by the General Assembly at its biennial session A. D. 1874.

In testimony whereof I hereunto set my hand and affix the seal of the office at Montpelier this 1st day of January A. D. 1875.

[L. S.]

GEORGE NICHOLS,
Secretary of State.

Mr. EDMUNDS. I move that these resolutions be printed and referred to the Committee on Foreign Relations; and in making this motion I wish to say that while I shall most cheerfully obey the instructions of the Legislature of the State of Vermont touching resistance to this treaty or any other treaty which they may, so far as I can now foresee, be likely to express an opinion upon, I cannot allow the occasion to pass without stating that I think the Legislature of Vermont is in error in that part of its resolutions in which it states "that the subject of trade and commercial intercourse with Canada, as well as with all other foreign countries, is not a proper matter of treaty stipulation." I think that by the Constitution of the United States there may be many treaties on subjects of trade and commercial intercourse which are the proper constitutional matters of treaty stipulation, and in that respect I am sorry to feel obliged to differ with that

body of gentlemen, for whom, individually and collectively, I have the best possible reasons for having a very high respect.

The first President of the United States, General Washington, on the 30th day of March, 1796, transmitted to the House of Representatives a message upon this very subject, a part of which I ask may be read, which I have marked in the volume I send to the desk.

The Chief Clerk read as follows:

The course which the debate has taken on the resolution of the House leads to some observations on the mode of making treaties under the Constitution of the United States.

Having been a member of the general convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject, and from the first establishment of the Government to this moment my conduct has exemplified that opinion, that the power of making treaties is exclusively with the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward becomes the law of the land. It is thus that the treaty-making power has been understood by foreign nations, and in all the treaties made with them we have declared and they have believed that when ratified by the President, with the advice and consent of the Senate, they become obligatory. In this construction of the Constitution every House of Representatives has heretofore acquiesced, and until the present time not a doubt or suspicion has appeared to my knowledge that this construction was not the true one. Nay, they have more than acquiesced; for until now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

There is also reason to believe that this construction agrees with the opinions entertained by the State conventions, when they were deliberating on the Constitution, especially by those who objected to it, because there was not required in commercial treaties the consent of two-thirds of the whole number of the members of the Senate instead of two-thirds of the Senators present, and because, in treaties respecting territorial and certain other rights and claims, the concurrence of three-fourths of the whole number of the members of both Houses respectively was not made necessary.

It is a fact, declared by the general convention and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that, under this influence, the smaller States were admitted to an equal representation in the Senate with the larger States; and that this branch of the Government was invested with great powers; for, on the equal participation of those powers, the sovereignty and political safety of the smaller States were deemed essentially to depend.

If other proofs than these and the plain letter of the Constitution itself be necessary to ascertain the point under consideration, they may be found in the journals of the general convention, which I have deposited in the office of the Department of State. In those journals it will appear that a proposition was made "that no treaty should be binding on the United States which was not ratified by a law," and that the proposition was explicitly rejected.

As, therefore, it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring legislative provision, and on these the papers called for can throw no light; and as it is essential to the due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request.

G. WASHINGTON.

UNITED STATES, *March* 30, 1796.

Mr. EDMUNDS. In February, 1816, this question again arose between the two Houses of Congress on the treaty of trade and commerce with the government of Great Britain, and it was brought to a conference; and in order to show the Senate precisely what the conferees on the two sides stated the true interpretation of the Constitution to be, I beg leave to read a very short paragraph from each, because I know how precious time is, and I do not intend to enlarge on this topic. The conferees of the Senate reported on this topic in this way:

The conferees of the Senate did not contest, but admitted the doctrine, that of treaties made in pursuance of the Constitution some may not and that others may

call for legislative provisions to secure their execution, which provision Congress, in all such cases, is bound to make. But they did contend that the convention under consideration requires no such legislative provisions, because it does no more than suspend the alien disability of British subjects in commercial affairs in return for the like suspension in favor of American citizens; that such matter of alien disability falls within the peculiar province of the treaty power to adjust; that it cannot be securely adjusted in any other way, and that a treaty duly made, and adjusting the same, is conclusive, and by its own authority suspends or removes antecedent laws that are contrary to its provisions.

The conferees on the part of the House of Representatives stated their case in this way:

They are persuaded that the House of Representatives does not assert the pretension that no treaty can be made without their assent; nor do they contend that in all cases legislative aid is indispensably necessary, either to give validity to a treaty, or to carry it into execution. On the contrary, they are believed to admit that to some, nay many treaties, no legislative sanction is required, no legislative aid is necessary.

On the other hand, the committee are not less satisfied that it is by no means the intention of the Senate to assert the treaty-making power to be in all cases independent of the legislative authority. So far from it, that they are believed to acknowledge the necessity of legislative enactment to carry into execution all treaties which contain stipulations requiring appropriations, or which might bind the nation to lay taxes, to raise armies, to support navies, to grant subsidies, to create States, or to cede territory; if indeed this power exists in the Government at all. In some or all of these cases, and probably in many others, it is conceived to be admitted, that the legislative body must act, in order to give effect and operation to a treaty; and if in any case it be necessary, it may confidently be asserted that there is no difference in principle between the Houses; the difference is only in the application of the principle.

Accordingly on that occasion the House, apparently as a matter of duty, passed a bill to make the legislative provisions supposed to be necessary by them to carry this treaty, which had been made and which was binding between the Government of the United States and Great Britain, into effect. I know that in 1844 in this body Mr. Choate on one occasion and Mr. Archer on another, from the Committee on Foreign Relations, reported on the Zollverein treaty that a commercial treaty was not apparently within the competence of the Senate to make, although probably in the history of the country down to that time a dozen at least of such treaties had been made, beginning with the treaty of Jay and coming down to that time, which covered the very topic upon which they spoke. I now ask your attention for a single moment to the decisions of the Supreme Court on the subject of the relation of the treaty-making power to the legislative power. The first is Foster *vs.* Neilson, decided by Chief Justice Marshall and his associates in the year 1829. They say:

A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infraterritorial; but is carried into execution by the sovereign power of the respective parties to the instrument.

In the United States, a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the Legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department: and the Legislature must execute the contract before it can become a rule for the court.

The article under consideration does not declare that all the grants made by His Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and would have repealed those acts of Congress which were repugnant to it; but the language is, that those grants shall be ratified and confirmed to the persons in possession.

Then the court goes on to say that that particular language is only a promise on the part of the treaty-making power that the sovereign will shall be brought into exercise to confirm those grants by proper acts of legislation.

In the year 1870, in the Cherokee tobacco case, the Supreme Court of the United States, by Mr. Justice Swayne, again decided:

The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations.

It then appears clear to me that the function of the treaty-making power granted under the Constitution is just as supreme in respect of the subjects to which it applies as is the legislative grant of power or the judicial grant of power; and therefore that any treaty which according to the understood course of nations covered a topic which might be, in the ordinary course of treaty-making powers, the subject of a treaty, as treaties of alliance and of commerce and of war always had been, the treaty is complete in itself so far as to bind the nation to carry it out. It may still require that there shall be an act of Congress to raise money or to raise armies if it be a treaty of alliance; it may still require, in order to make it effectual and to carry it into execution, if it be a treaty of commerce, that the legislative power of the Government must be invoked to regulate the tariff laws. That may be perfectly true; but the simple question is one of constitutional power, whether the treaty binds the nation to do the thing which the treaty itself has provided it shall do. If the nation does not choose to do it, of course other remedies must be resorted to. But to say, as these resolutions appear to have said, that it is not within the constitutional competence of the Senate, of the President, and two-thirds of the States represented by the Senate, acting under that clause of the Constitution, to make any treaty upon the subject of commercial intercourse or of trade, is in my opinion to say that which the Constitution does not warrant, and to do that, if it were carried out, which President Washington thought would be injurious to the common interest of the whole country, and would impair the right of the various States, as States interested in protecting the integrity and safety and peace of the whole Union, to exercise as such States their power touching all matters of foreign relations.

But, as I have said, Mr. President, the time does not allow me to pursue this subject. So far as regards the object which the Legislature of my honored State has in view—that is, to ask me to vote against the ratification of this treaty—as I said before, I shall most cheerfully do it.

The resolutions were referred to the Committee on Foreign Relations, and ordered to be printed.

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